

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOLAR PROJECTCO 6, LLC,

Plaintiff,

-v-

SPARK ENERGY, LLC,

Defendant.

20 Civ. 8787 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

On December 14, 2020, Solar Projectco 6, LLC (“Solar”) filed a motion to dismiss Spark Energy, LLC’s (“Spark”) counterclaim under Rule 12 of the Federal Rules of Civil Procedure. Dkt. 20. Under Rule 15(a)(1)(B), Spark has 21 days after the service of a motion under Rule 12(b) to amend once as a matter of course.

In recognition of the coming holidays, the Court will extend this deadline. Accordingly, it is hereby ORDERED that Spark shall file any amended counterclaim by January 19, 2021. No further opportunities to amend will ordinarily be granted. If Spark does amend, by February 2, 2021, Solar shall: (1) file an answer; (2) file a new motion to dismiss; or (3) submit a letter to the Court stating that it relies on the previously filed motion to dismiss.¹

It is further ORDERED that if no amended complaint is filed, Spark shall serve any opposition to the motion to dismiss by January 19, 2021. Solar’s reply, if any, shall be served by February 2, 2021. At the time any reply is served, the moving party shall supply the Court with a

¹ If Solar files a new motion to dismiss or relies on its previous motion, Spark’s opposition will be due 14 days thereafter, and Solar’s reply, if any, will be due seven days after that.

courtesy copy of all motion papers by attaching them as PDF files to a single email addressed to EngelmayerNYSDChambers@nysd.uscourts.gov.

At the initial pretrial conference held yesterday, Solar stated it may file a motion for judgment on the pleadings, directed to Spark's theory that it contractually permitted to apply an "offset" to the sums it otherwise was obligated to pay Solar. Accordingly, it is hereby ORDERED that Solar shall serve any motion for judgment on the pleadings by January 19, 2021. If Solar does so, by February 2, 2021, Spark shall serve its response, and Solar's reply, if any, shall be served by February 9, 2021. The Court has chosen these days to be synchronous with the schedule governing Spark's motion to dismiss Solar's counterclaim. The Court similarly requests that the moving party email the Court a courtesy copy of these submissions upon the filing of a reply.

Finally, at the initial pretrial conference, the Court stayed discovery pending resolution of these motions, having determined, *inter alia*, that this course was most cost-efficient for the parties.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: December 23, 2020
New York, New York